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8 United States of America

9 UNITED STATES DISTRICT COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) Criminal Case No. 07CR3239-JM
12)
12 Plaintiff,)
13) UNITED STATES' PROPOSED JURY
13 v.) INSTRUCTIONS
14)
14 LEONARDO SAN JUAN, JR.,)
15) Date: June 2, 2008
15) Time: 9:00 a.m.
16 Defendant.)
16)
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17 _____)

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19 COMES NOW the plaintiff, United States of America, by and
20 through its counsel, Karen P. Hewitt, United States Attorney,
21 and Nicole Acton Jones and Tara McGrath, Assistant United States
22 Attorneys, respectfully submits the following Proposed Jury
23 Instructions.
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1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 1

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4 Members of the jury, now that you have heard all the
5 evidence, it is my duty to instruct you on the law which applies
6 to this case. A copy of these instructions will be available in
7 the jury room for you to consult.

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9 It is your duty to find the facts from all the evidence in
10 the case. To those facts you will apply the law as I give it to
11 you. You must follow the law as I give it to you whether you
12 agree with it or not. And you must not be influenced by any
13 personal likes or dislikes, opinions, prejudices, or sympathy.
14 That means that you must decide the case solely on the evidence
15 before you. You will recall that you took an oath promising to
16 do so at the beginning of the case.

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18 In following my instructions, you must follow all of them
19 and not single out some and ignore others; they are all equally
20 important. You must not read into these instructions or into
21 anything the court may have said or done any suggestion as to
22 what verdict you should return—that is a matter entirely up to
23 you.

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25 Committee on Model Criminal Jury Instructions - Ninth Circuit,
26 Manual of Model Jury Instructions for the Ninth Circuit, § 3.1
[2003 Edition - West Publishing Co.]

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28 [Duties of Jury to Find Facts and Follow Law]

COURT'S INSTRUCTION NO.

GOVERNMENT'S PROPOSED INSTRUCTION NO. 2

The indictment is not evidence. The defendant has pleaded not guilty to the charge. The defendant is presumed to be innocent and does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charge beyond a reasonable doubt.

Committee on Model Criminal Jury Instructions - Ninth Circuit,
Manual of Model Jury Instructions for the Ninth Circuit, § 3.2
[2003 Edition - West Publishing Co.]

[Charge Against Defendant Not Evidence-Presumption of Innocence-Burden of Proof]

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 3

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4 A defendant in a criminal case has a constitutional right
5 not to testify. No presumption of guilt may be raised, and no
6 inference of any kind may be drawn, from the fact that the
7 defendant did not testify.

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Committee on Model Criminal Jury Instructions - Ninth Circuit,
Manual of Model Jury Instructions for the Ninth Circuit, § 3.3
[2003 Edition - West Publishing Co.]

[Defendant's Decision Not to Testify]

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 4

3 The defendant has testified. You should treat this
4 testimony just as you would the
5 testimony of any other witness.

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Committee on Model Criminal Jury Instructions - Ninth Circuit,
Manual of Model Jury Instructions for the Ninth Circuit, § 3.4
[2003 Edition - West Publishing Co.]

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[Defendant's Decision to Testify]

COURT'S INSTRUCTION NO.

GOVERNMENT'S PROPOSED INSTRUCTION NO. 5

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

Committee on Model Criminal Jury Instructions - Ninth Circuit,
Manual of Model Jury Instructions for the Ninth Circuit, § 3.5
[2003 Edition - West Publishing Co.]

[Reasonable Doubt-Defined]

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 6

3
4 The evidence from which you are to decide what the facts are
5 consists of:

6 (1) the sworn testimony of any witness;
7 (2) the exhibits which have been received into evidence;
8 and
9 (3) any facts to which all the lawyers have stipulated.

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26 Committee on Model Criminal Jury Instructions - Ninth Circuit,
27 Manual of Model Jury Instructions for the Ninth Circuit, § 3.6
28 [2003 Edition - West Publishing Co.]

[What is Evidence]

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 7

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4 In reaching your verdict you may consider only the testimony
5 and exhibits received into evidence. Certain things are not
6 evidence and you may not consider them in deciding what the
7 facts are. I will list them for you:

8 1. Arguments and statements by lawyers are not evidence.
9 The lawyers are not witnesses. What they have said in their
10 opening statements, [will say in their] closing arguments and at
11 other times is intended to help you interpret the evidence, but
12 it is not evidence. If the facts as you remember them differ
13 from the way the lawyers state them, your memory of them
controls.

14 2. Questions and objections by lawyers are not evidence.
15 Attorneys have a duty to their clients to object when they
16 believe a question is improper under the rules of evidence. You
17 should not be influenced by the question, the objection, or the
court's ruling on it.

18 3. Testimony that has been excluded or stricken, or that
19 you have been instructed to disregard, is not evidence and must
20 not be considered. In addition some testimony and exhibits have
21 been received only for a limited purpose; where I have given a
22 limiting instruction, you must follow it.

23 4. Anything you may have seen or heard when the court was
24 not in session is not evidence. You are to decide the case
25 solely on the evidence received at the trial.

26 Committee on Model Criminal Jury Instructions - Ninth Circuit,
27 Manual of Model Jury Instructions for the Ninth Circuit, § 3.7
[2003 Edition - West Publishing Co.]

28 [What is Not Evidence]

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 8

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4 Evidence may be direct or circumstantial. Direct evidence

5 is direct proof of a fact, such as testimony of an eyewitness.

6 Circumstantial evidence is indirect evidence, that is, proof of

7 a chain of facts from which you could find that another fact

8 exists, even though it has not been proved directly. You are to

9 consider both kinds of evidence. The law permits you to give

10 equal weight to both, but it is for you to decide how much

11 weight to give to any evidence.

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26 Committee on Model Criminal Jury Instructions - Ninth Circuit,

27 Manual of Model Jury Instructions for the Ninth Circuit, § 3.8

28 [2003 Edition - West Publishing Co.]

29 [Direct and Circumstantial Evidence]

COURT'S INSTRUCTION NO.

GOVERNMENT'S PROPOSED INSTRUCTION NO. 9

4 In deciding the facts in this case, you may have to decide
5 which testimony to believe and which testimony not to believe.
6 You may believe everything a witness says, or part of it, or
7 none of it.

8 In considering the testimony of any witness, you may take
9 into account:

1. the opportunity and ability of the witness to see or
2. hear or know the things testified to;
3. the witness' memory;
4. the witness' manner while testifying;
5. the witness' interest in the outcome of the case and
any bias or prejudice;
6. whether other evidence contradicted the witness'
testimony;
7. the reasonableness of the witness' testimony in light
of all the evidence; and
8. any other factors that bear on believability.

21 The weight of the evidence as to a fact does not necessarily
22 depend on the number of witnesses who testify.

26 Committee on Model Criminal Jury Instructions - Ninth Circuit,
Manual of Model Jury Instructions for the Ninth Circuit, § 3.9
[2003 Edition - West Publishing Co.]

28 || [Credibility of Witnesses]

COURT'S INSTRUCTION NO.

GOVERNMENT'S PROPOSED INSTRUCTION NO. 10

4 You have heard testimony that the defendant made a
5 statement. It is for you to decide (1) whether the defendant
6 made the statement, and (2) if so, how much weight to give to
7 it. In making those decisions, you should consider all of the
8 evidence about the statement, including the circumstances under
9 which the defendant may have made it.

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28 [statements by Defendant]

07CR3239-JM

GOVERNMENT'S PROPOSED INSTRUCTION NO. 11

4 You have heard evidence of the defendant's character for law
5 abidingness. In deciding this case, you should consider that
6 evidence together with and in the same manner as all the other
7 evidence in the case.

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26 Committee on Model Criminal Jury Instructions - Ninth Circuit,
27 Manual of Model Jury Instructions for the Ninth Circuit, § 4.4
[2003 Edition - West Publishing Co.]

28 || [Character of Defendant]

COURT'S INSTRUCTION NO.

GOVERNMENT'S PROPOSED INSTRUCTION NO. 12

4 You have heard testimony from persons who, because of
5 education or experience, are permitted to state opinions and the
6 reasons for their opinions.

7 Opinion testimony should be judged just like any other
8 testimony. You may accept it or reject it, and give it as much
9 weight as you think it deserves, considering the witness'
10 education and experience, the reasons given for the opinion, and
11 all the other evidence in the case.

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25 Committee on Model Criminal Jury Instructions - Ninth Circuit,
26 Manual of Model Jury Instructions for the Ninth Circuit, § 4.17
[2003 Edition - West Publishing Co.]

28 | Opinion Evidence, Expert Witness

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 13

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4 The defendant is charged in the indictment with possession
5 of an unregistered firearm in violation of Section 5861(d) of
6 Title 26 of the United States Code. In order for the defendant
7 to be found guilty of that charge, the government must prove
8 each of the following elements beyond a reasonable doubt:

9 First, the defendant knowingly possessed a firearm, namely,
10 a machinegun;

11 Second, the defendant was aware of the features of the
12 machinegun that brought it within the scope of the firearm
13 definition; and

14 Third, the machinegun was not registered to the defendant
15 in the National Firearms Registration and Transfer Record.

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20 Committee on Model Criminal Jury Instructions - Ninth Circuit,
21 Manual of Model Jury Instructions for the Ninth Circuit, § 9.31
[2003 Edition - West Publishing Co.] [MODIFIED]

22 [Possession of Unregistered Firearm]

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24 See Staples v. United States, 511 U.S. 600, 619 (1994) ("to
25 obtain a conviction, the Government should have been required to
prove that petitioner knew of the features of his AR-15 that
brought it within the scope of the Act"). See also United States
26 v. Gergen, 172 F.3d 719, 724 (9th Cir. 1999) (mens rea
requirement that the defendant know of the particular
27 characteristics of the firearm which bring it within the scope
of the statute is "an essential element of a § 5861(d)
28 violation").

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 14

4 Firearm and Machinegun - Defined

5 The term "firearm" includes a machinegun. The term
6 "machinegun" means any weapon which shoots, is designed to
7 shoot, or can be readily restored to shoot, automatically more
than one shot, without manual reloading, by a single function
of the trigger.

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28 26 U.S.C. § 5845(a)(6) & (b)

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 15

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4 Possession - Defined

5 A person has possession of something if the person knows
6 of its presence and has physical control of it, or knows of
7 its presence and has the power and intention to control it.
8 More than one person can be in possession of something if each
9 knows of its presence and has the power and intention to
10 control it.

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26 Committee on Model Criminal Jury Instructions - Ninth Circuit,
27 Manual of Model Jury Instructions for the Ninth Circuit,
28 § 3.18 [2003 Edition - West Publishing Co.]

29 [Possession - Defined]

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 16

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4 An act is done knowingly if the defendant is aware of the
5 act and does not act through ignorance, mistake, or accident.
6 The government is not required to prove that the defendant
7 knew that his acts or omissions were unlawful. You may
8 consider evidence of the defendant's words, acts, or
9 omissions, along with all the other evidence, in deciding
10 whether the defendant acted knowingly.

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26 Committee on Model Criminal Jury Instructions - Ninth Circuit,
27 Manual of Model Jury Instructions for the Ninth Circuit, § 5.6
[2003 Edition - West Publishing Co.]

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[Knowingly - Defined]

COURT'S INSTRUCTION NO.

GOVERNMENT'S PROPOSED INSTRUCTION NO. 17

Exhibit _____ is a certificate of the custodian of the National Firearms Register and Transfer Record. A certificate is a written statement of facts signed by a public official.

The certificate states that the custodian made a diligent search of the record and found no record of any firearm being registered to the defendant. From this certificate you may, but need not, decide that the firearm described in the indictment was not registered to the defendant.

Committee on Model Criminal Jury Instructions - Ninth Circuit,
Manual of Model Jury Instructions for the Ninth Circuit,
§ 9.33 [2003 Edition - West Publishing Co.]

28 [Firearms - Evidence of No Registration]

COURT'S INSTRUCTION NO.

GOVERNMENT'S PROPOSED INSTRUCTION NO. 18

When you begin your deliberations, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

8 You will then discuss the case with your fellow jurors to
9 reach agreement if you can do so. Your verdict, whether
10 guilty or not guilty, must be unanimous.

11 Each of you must decide the case for yourself, but you
12 should do so only after you have considered all the evidence,
13 discussed it fully with the other jurors, and listened to the
14 views of your fellow jurors.

15 Do not be afraid to change your opinion if the discussion
16 persuades you that you should. But do not come to a decision
17 simply because other jurors think it is right.

18 It is important that you attempt to reach a unanimous
19 verdict but, of course, only if each of you can do so after
20 having made your own conscientious decision. Do not change an
21 honest belief about the weight and effect of the evidence
22 simply to reach a verdict.

26 Committee on Model Criminal Jury Instructions - Ninth Circuit,
Manual of Model Jury Instructions for the Ninth Circuit, § 7.1
[2003 Edition - West Publishing Co.]

28 | Duty to Deliberate

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 19

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4 Your verdict must be based solely on the evidence and on
5 the law as I have given it to you in these instructions.
6 However, nothing that I have said or done is intended to
7 suggest what your verdict should be--that is entirely for you
8 to decide.

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Committee on Model Criminal Jury Instructions - Ninth Circuit,
Manual of Model Jury Instructions for the Ninth Circuit, § 7.2
[2000 Edition - West Publishing Co.]

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28 [Consideration of Evidence]

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 20

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4 Some of you have taken notes during the trial. Whether
5 or not you took notes, you should rely on your own memory of
6 what was said. Notes are only to assist your memory. You
7 should not be overly influenced by the notes.

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26 Committee on Model Criminal Jury Instructions - Ninth Circuit,
27 Manual of Model Jury Instructions for the Ninth Circuit, § 7.3
[2003 Edition - West Publishing Co.]

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[Notes]

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 21

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4 The punishment provided by law for this crime is for the
5 court to decide. You may not consider punishment in deciding
6 whether the Government has proved its case against the
7 defendant beyond a reasonable doubt.

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25 Committee on Model Criminal Jury Instructions - Ninth Circuit,
26 Manual of Model Jury Instructions for the Ninth Circuit, § 7.4
[2003 Edition - West Publishing Co.]

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28 [Jury Consideration of Punishment]

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 22

3
4 A verdict form has been prepared for you. After you have
5 reached unanimous agreement on a verdict, your foreperson will
6 fill in the form that has been given to you, sign and date it
7 and advise the Court that you are ready to return to the
8 courtroom.

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23 Committee on Model Criminal Jury Instructions - Ninth Circuit,
24 Manual of Model Jury Instructions for the Ninth Circuit, § 7.5
25 [2003 Edition - West Publishing Co.]

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28 [Return of Verdict (*Renamed Verdict Form*)]